# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes OPN, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

While the landlord's Application for Dispute Resolution indicated the landlord was seeking an order of possession due to the tenant's written notice to end tenancy, the parties confirmed that the tenancy had ended. The landlord confirmed he no longer needed an order of possession and I amended his Application for Dispute Resolution to exclude the matter of possession.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for the costs to re-rent the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 45,, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The landlord submitted the parties entered into a tenancy agreement on May 14, 2016 for a month to month tenancy beginning on June 1, 2016 for the monthly rent of $875.00 due on the 1st of each month with a security deposit of $437.50 paid.

The landlord submitted that on June 3, 2016 he received an email from the tenant stating should we not be moving into the rental unit. The landlord also submitted that he received notification from his bank that the tenant had put a stop payment on her June 2016 rent cheque.

The landlord seeks rent in the amount of $875.00; $25.00 for stop payment charges; and $115.50 in costs to re-rent the unit. The landlord submitted that it is a costly and time consuming process to advertise; show and assess applicants for potential tenants.

The landlord did not provide any documentary confirmation of stop payment charges nor for costs associated with re-renting the unit.

The tenant submitted that when she viewed the rental unit she was not made aware that her bedroom was right beside the location in the residential property where all the "smart" meters for hydro were situated. She stated that she was only made aware when they completed the walk through when she was moving into the property.

The tenant testified when she found out about this she immediately started doing research related to harmful effects associated with "smart" meters. She stated that after much research and many discussions with friends/family she determined that she was not able to rent the unit based on concern for her health and any possible impact on potential pregnancy and/or children.

The tenant acknowledged in the hearing that prior to the research she had done she had not been aware that meters could be set up in such a location and as such it was not something that she naturally would have asked the landlord about. She stated the meters were located in a cabinet.

In support of her position the tenant submitted reports explaining the hazards of "smart" meters and a newspaper article reporting that the Union of BC Municipalities and individual municipalities had passed a request for a moratorium on "smart" meters.

The landlord submitted that the evidence is at best inconclusive and that the tenant had no legitimate reason to end the tenancy without proper notice.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 16 of the *Act* stipulates that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In the case before me I accept the parties reached an agreement and that agreement allowed for a month to month tenancy beginning on June 1, 2016. As such, I find both parties were bound by the respective obligations under the *Act* at that time.

From the testimony of both parties I find that the issue of the location of the hydro meters was not raised nor were any promises made in regard to the hydro meters by either party prior to the parties agreeing to the tenancy.

Section 45(1) stipulates that a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

A material term may include the landlord's obligations as set out in Section 32(1) that the landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety, and housing standards required by law and having regard to the age, character and location of the rental unit make it suitable for occupation by a tenant.

However, despite the tenant's research she has provided no evidence that the placement of the hydro meters in relation to her rental unit do not comply with the health, safety, and housing standards required by law. As such, I find the tenant has failed to establish the landlord has breached a material term.

Even if the landlord had breached a material the tenant is not simply allowed to end the tenancy she must, pursuant to Section 45(3), issue the landlord an notification that he is breach of a material term and then allow him a reasonable time to correct the breach. The tenant's notification did provide such an option to the landlord.

As such, I find the earliest the tenant could have ended the tenancy that would be compliant with Section 45 if she issued her notice to end the tenancy on June 3, 2016 would have been July 31, 2016. As such, I find the landlord would be entitled to compensation for lost revenue for both June and July 2016, subject to the landlord's obligations to mitigate their loss.

The landlord sought only rent for the month of June 2016 as he re-rented the unit for July 2016. I find the tenant is entitled to rent in the amount of $875.00.

However as to the landlord's claim for stop payment charges, I find the landlord has provided no evidence that he incurred any such costs. In addition, the Residential Tenancy regulation allow a landlord to charge such a fee if it is a term in the tenancy

agreement. Since the landlord has provided a copy of the tenancy agreement into evidence I cannot determine if there is such a clause. Therefore, I dismiss this portion of the landlord's claim.

In relation to the landlord's claim for the costs of re-renting the unit in the amount of $115.50, I find that the need to re-rent the unit would arise whether or not the tenant had provided the landlord with an allowable notice and is simply a cost of doing business. As such, I find these costs were not incurred as a result of any violation of the Act, regulation or tenancy agreement and I dismiss this part of the landlord's claim.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **$925.00** comprised of $875.00 rent owed and $50.00 of the $100.00 filing fee paid by the landlord for this application, as he was only partially successful in his claim.

I order the landlord may deduct the security deposit and interest held in the amount of $437.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **$487.50**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 14, 2016

Residential Tenancy Branch